

§ 34.4

(c) *Disposable pay* means the amount that remains from an employee's Federal pay after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits and such other deductions that are required by law to be withheld including garnishments.

§ 34.4 Interest, penalty, and administrative charges.

(a) Except as otherwise provided by statute, contract or excluded in accordance with FCCS, STATE will assess:

(1) Interest on unpaid claims in accordance with existing Treasury rules and regulations.

(2) Penalty charges at 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(3) Administrative charges to cover the costs of processing and calculating delinquent claims.

(4) Late payment charges shall be computed from the date of mailing or hand delivery of the notice of the claim and interest requirements.

(5) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and then to outstanding principal.

(6) Waiver. STATE shall consider waiver of interest, penalty charges and/or administrative charges in accordance with the FCCS, 4 CFR 102.13(g).

§ 34.5 Exceptions.

(a) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated, or settled in accordance with the regulations published under 31 U.S.C. 3726 (see 41 CFR part 101-41).

(b) Claims arising out of acquisition contracts subject to the Federal Acquisition Regulation (FAR) shall be determined, collected, compromised, terminated, or settled in accordance with those regulations (see 48 CFR part 32).

(c) Claims based in whole or in part on conduct in violation of the antitrust laws, or in regard to which there is an indication of fraud, presentation of a false claim, or misrepresentation on

22 CFR Ch. I (4-1-02 Edition)

the part of the debtor or any other party having an interest in the claim, shall be referred to the Department of Justice for compromise, suspension, or termination of collection action.

(d) Tax claims are excluded from the coverage of this regulation.

§ 34.6 Use of procedures.

Procedures authorized by this regulation (including but not limited to referral to a debt collection agency, administrative offset, or salary offset) may be used singly or in combination.

§ 34.7 Other procedures or actions.

(a) Nothing contained in this regulation is intended to require STATE to duplicate administrative proceedings required by contract or other laws or regulations.

(b) Nothing in this regulation is intended to preclude utilization of informal administrative actions or remedies which may be available.

(c) Nothing contained in this regulation is intended to deter STATE from demanding the return of specific property or from demanding the return of the property or the payment of its value.

(d) The failure of STATE to comply with any provision in this regulation shall not serve as defense to the debt.

Subpart B—Administrative Offset and Referral to Collection Agencies

§ 34.8 Demand for payment.

(a) A total of three progressively stronger written demands at approximately 30-day intervals will normally be made, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the FCCS, including immediate referral for litigation and/or offset.

(b) The initial written demand for payment shall inform the debtor of:

(1) The basis of the claim;

(2) The amount of the claim;

(3) The date when payment is due 30-days from the date of mailing or hand

Department of State

§ 34.10

delivery of the initial demand for payment;

(4) The provision for late payment (interest), penalty and administrative charges, if payment is not received by the due date.

§ 34.9 Collection by administrative offset.

(a) Offset will be used whenever feasible and not otherwise prohibited. Offset is not required to be used in every instance and consideration should be given to the debtor's financial condition and the impact of offset on STATE programs or projects.

(b) The procedures for offset in this section do not apply to the offset of Federal salaries under 5 U.S.C. 5514.

(c) Before offset is made, STATE will provide the debtor with written notice informing the debtor of:

(1) The nature and amount of the claim;

(2) The intent of STATE to collect by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(3) The right of the debtor to inspect and copy STATE's records of the claim;

(4) The right of the debtor to a review of the claim within STATE. If the claim is disputed in full or part, the debtor shall respond to the demand in writing by making a request by the payment due date stated within the notice to the billing office for a review of the claim within STATE. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion must be paid by the date stated in the notice to avoid late payment, penalty and administrative charges. If STATE either sustains or amends its determination, it shall notify the debtor of its intent to collect the claim, with any adjustments based on the debtor's response by administrative offset unless payment is received within 30-days of the mailing of the notification of its decision following a review of the claim.

(5) The right of the debtor to offer to make a written agreement to repay the amount of the claim.

(6) The notice of offset need not include the requirements of paragraphs (c) (3), (4), or (5) of this section if the debtor has been informed of the requirements at an earlier stage in the administrative proceedings, e.g., if they were included in a final contracting officer's decision.

(d) STATE will promptly make requests for offset to other agencies known to be holding funds payable to a debtor and, when appropriate, place the name of the debtor on the "List of Contractors Indebted to the United States". STATE will provide instructions for the transfer of funds.

(e) STATE will promptly process requests for offset from other agencies and transfer funds to the requesting agency upon receipt of the written certification that the person owes the debt and that, if a Federal employee, the employee has been given the procedural rights required by 5 USC 5514 and 5 CFR part 550, subpart K.

§ 34.10 Administrative offset against amounts payable for Civil Service Retirement and Disability Fund.

(a) Unless otherwise prohibited by law, STATE may request that monies that are due and payable to a debtor from the Civil Service Retirement and Disability Fund, Federal Employee Retirement Fund, or the Foreign Service Retirement Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments, debts owed the United States by the debtor. Such requests shall be made to the appropriate officials of the respective fund servicing agency in accordance with such regulations as may be prescribed by the Director of that agency.

(b) When making a request for administrative offset under paragraph (a) of this section, STATE shall include written statements that:

(1) The debtor owes the United States a debt, including the amount of the debt.

(2) STATE has complied with the applicable statutes, regulations, and procedures of the respective fund servicing agencies.